IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 46 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PENDIYALA SURESHKUMAR RAMARAO

Versus

SOMPALLY ARUNABINDU,W/O.SURESHKUMAR AND D/O.SURYANARAYAN,

Appearance:

1. Criminal Revision Application No. 46 of 2004

MR LN MEDIPALLY for Petitioner No. 1

MR KIRIT J MACWAN for Respondent No. 1

MR KT DAVE, APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 29/07/2004

ORAL JUDGEMENT

1. Rule. Ld. Counsel Mr. KJ Macwan appears and waives service of Rule for respondent No.1 wife and ld.

APP Mr. KT Dave appears and waives service of Rule for respondent No.2 State of Gujarat. With the consent of the parties, the matter is taken up for final hearing today.

2(i) It is submitted by ld. counsel Mr. Medipally for the petitioner husband that the impugned order of maintenance dated 17.11.2003 passed by ld. JMFC, Nadiad in Cri. Misc. Application No. 38/2002 (Exh.27) as the said order is passed in absentia and though the petitioner is a person dependent on his father and having no sufficient means, he has been fastened with the liability to pay an amount of Rs.3000/ per month by way of maintenance to respondent no.1 wife. Over and above, the petitioner is also asked to pay Rs.400/ by way of costs. That the ld. JMFC has committed gross error in determining the amount of maintenance. It is submitted that though there was no cogent documentary evidence as to the income of the present petitioner, the amount of maintenance has been granted to respondent no.1 wife.

(ii) It is not a matter of dispute that the present petitioner was absent and he has not led any oral or documentary evidence. Only formal reply of resistance was submitted, but in absence of evidence, statements made in the written reply can not be read or equated with the evidence. It is submitted by ld. counsel Mr. Macwan that because of geographical distance between the place where the proceedings under Sec.125 of CrPC are going on and the place of residence of the petitioner husband, it was not physically or financially possible for the wife to call each witness to prove each averment made or documents produced in the maintenance application or to prove the financial strength of the petitioner husband as well as of the family of the petitioner. So, considering the nature of evidence, it seems that the ld. Magistrate has granted maintenance of Rs.3000/ keeping in view the socio-economic background of the petitioner husband. The anxiety expressed before the Court by the ld. counsel appearing for the petitioner is that respondent no.1 wife is a earning lady and there was no reason for the Court to grant any amount on account of the fact that respondent no.1 was also simultaneously studying in Ahmedabad and that too when there was no direct evidence as to the income of the petitioner husband. Therefore, the petitioner husband should be given an opportunity to lead evidence by quashing the impugned order. It is further submitted that uptill now, the amount of Rs.20,000/ has been deposited by the petitioner in compliance with the order passed by this Court.

3(i) As against that, ld. counsel Mr. Macwan appearing for respondent no.1 wife has submitted that this Cri. Rev. Application requires to be dismissed as there is no merits in the Cri. Rev. Application. On the contrary, by remaining absent, the petitioner husband had invited the order. Alternatively, it is pointed out that if the petitioner is to be given a chance to lead evidence, then it also should be clarified that respondent no.1 wife can also lead evidence as to the income and financial background of the petitioner husband and he should be asked to pay some amount by way of interim maintenance. Otherwise, his intention to protract the proceedings shall get encouragement.

(ii) Ld. APP Mr. Dave has rightly submitted that in such or similar type of cases, the petitioner husband should be asked to clear the amount of arrears of maintenance.

4(i) Considering the totality emerging from the record and the facts brought to the notice of the Court, this Court is of the view that the petitioner should be given an opportunity to prove his say in the written reply submitted before the ld. JMFC and parties should be relegated to the trial Court for the purpose.

(ii) Rule of best evidence is not applicable in maintenance proceeding as it being an inquiry in real sense. This being the quasi-civil proceedings, probabilities are required to be brought on record. This enlarges the scope of drawing reasonable inference as it is being done in the case of a able-bodied man.

5. During the course of hearing of this application, this Court had attempted to have clue as to the socio-economic background of the petitioner husband and ld. counsel Ms. Heena Desai appearing on behalf of Legal Services Committee, High Court of Gujarat, Ahmedabad has tendered a report received from Andhra Pradsh State Legal Services Authority. In the interest of justice and to avoid prejudice to either of the parties, I am not inclined to make any comments upon the contents of the report received today, but the same is taken on record.

6(i) For the reasons aforesaid, the impugned order (Exh.27) dated 17.11.2003 passed by ld. JMFC, Nadiad in Cri. Misc. Application No.38/2002 granting maintenance at the rate of Rs.3,000/ per month is hereby quashed and set aside and parties are relegated to the ld. JMFC for deciding the maintenance application afresh and in accordance with law.

(ii) It will be open for the ld. JMFC to afford an opportunity to both the parties to lead evidence and if such evidence is led, the amount of maintenance shall be determined afresh without entering into the merits of present order or the order passed on merits on earlier occasion by ld. JMFC viz. impugned order.

(iii) Ld. JMFC shall see that the hearing of maintenance application is conducted expeditiously and is concluded at the earliest and preferably within One Year from the date of receipt of writ of this order.

7. Totality emerging from the record and other facts including the observations made by the ld. JMFC, and till the maintenance application is decided afresh by the ld. JMFC, I direct the petitioner husband to pay Rs.3,000/ (Rs. three thousand only) to the respondent no.1 wife by way of interim maintenance from the date of application. The petitioner shall also clear up the arrears at the earliest and preferably within 3 months from today and he shall also continue to pay Rs.3,000/ per month as interim maintenance regularly within first 10 days of each British Calendar Month till the matter is heard and decided on merits. The amount of Rs.10,000/ lying with the Registry be paid to respondent No.1 wife on proper identification by A/c Payee Cheque. The petitioner positively can adjust the amount deposited and paid to respondent no.1 wife while calculating and clearing the amount of arrears of maintenance, to be paid to respondent no.1 wife.

8. Rule is made absolute subject to the aforesaid observations and directions.

[C.K. BUCH, J]
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